

AMENDED IN ASSEMBLY MARCH 26, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 735

Introduced by Assembly Member Campbell

February 19, 2003

An act to amend Section 21004 of, and to add Section ~~21014.5~~ 21014.4 to, the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 735, as amended, Campbell. Taxpayers' bill of rights: taxpayers' rights advocate: privacy rights.

The Katz-Harris Taxpayers' Bill of Rights Act governs the assessment, audit, and collection of state taxes administered by the Franchise Tax Board. Existing law requires that the Franchise Tax Board establish the position of a Taxpayers' Rights Advocate for purposes of coordinating prompt resolution of taxpayer complaints and problems. The advocate or his or her designee is responsible for coordinating resolution of taxpayer complaints and problems, including any taxpayer complaints regarding unsatisfactory treatment of taxpayers by board employees.

This bill would be known as the Taxpayer Privacy Bill of Rights Act and would prohibit the Franchise Tax Board from releasing a taxpayer's personal or financial information to the general public, unless *the Franchise Tax Board shows a compelling interest for the disclosure of that information and the disclosure is first authorized by the courts*. This bill would also expand the scope of the Taxpayers' Rights Advocate's authority to review and facilitate resolution of taxpayer complaints to include complaints regarding the unauthorized release of taxpayers'

personal and financial information to the general public by employees or officers of the Franchise Tax Board.

This bill would also specify that an officer or employee of the Franchise Tax Board may not threaten to release a taxpayer's personal or financial information for purposes of forcing a taxpayer to accept an offer to settle the taxpayer's civil tax liability dispute. This bill would also provide that the release of, or ~~a~~ *an express or implied* threat to release, that information by an officer or an employee of the Franchise Tax Board *for purposes of forcing a tax settlement* would constitute grounds for termination or other disciplinary actions as provided by existing law. *This bill would also specify conditions for the Franchise Tax Board's disclosure of a taxpayer's financial or personal information in any court or administrative proceeding where that information would otherwise be made available to the general public.*

This bill would also allow a taxpayer, who has sustained damages as the result of any unauthorized release of, or a threat to release, the taxpayer's personal or financial information, to pursue an action for damages against the Franchise Tax Board or its officer or employee.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 21004 of the Revenue and Taxation
2 Code is amended to read:
3 21004. (a) The board shall establish the position of the
4 Taxpayers' Rights Advocate. The advocate or his or her designee
5 shall be responsible for coordinating resolution of *any* taxpayer
6 complaints and problems *with respect to the Franchise Tax Board*,
7 including any taxpayer complaints regarding unsatisfactory
8 treatment of taxpayers by board employees or the unauthorized
9 release of taxpayers' personal or financial information to the
10 general public by board employees or officers. The advocate shall
11 report directly to the executive officer of the board.
12 (b) The advocate or his or her designee shall review taxpayers'
13 complaints regarding an unauthorized release of, or a threat to
14 release, taxpayers' personal or financial information by an officer
15 or employee of the board in violation of Section ~~21014.5~~ 21014.4,
16 and shall verify that the board takes appropriate disciplinary
17 action, as provided by existing law, against any officer or



1 employee who violates a taxpayer's privacy rights, as described in
2 subdivision (b) of Section ~~21014.5~~ 21014.4.

3 (c) The advocate or his or her designee shall give highest
4 priority to reviewing and taking prompt and appropriate action,
5 including staying actions where ~~taxpayers have a taxpayer has~~
6 suffered or will suffer irreparable loss as the result of board action.
7 Applicable statutes of ~~limitation~~ *limitations, and the accrual of*
8 *any penalties and interest*, shall be tolled during the pendency of
9 a stay. ~~Any penalties and interest which would otherwise accrue~~
10 ~~shall not be affected by the granting of a stay.~~

11 SEC. 2. Section 21014.4 is added to the Revenue and Taxation
12 Code, to read:

13 21014.4. (a) This section shall be known and may be cited as
14 the Taxpayer Privacy Bill of Rights.

15 (b) An officer or employee of the Franchise Tax Board may not
16 release a taxpayer's personal or financial information to the
17 general public, unless ~~authorized by the courts~~ *a compelling*
18 *interest is shown by the Franchise Tax Board and disclosure is first*
19 *authorized by a court of competent jurisdiction.*

20 ~~Unauthorized release of, or a~~ *Any unauthorized release of,*
21 *or any threat to release a taxpayer's financial or personal*
22 *information to the general public, whether express or implied, by*
23 *an officer or employee of the Franchise Tax Board, when the*
24 ~~taxpayer rejects a Franchise Tax Board settlement offer of the~~
25 ~~taxpayer's proposed state tax liability, constitutes grounds for~~
26 ~~termination of~~ *regardless of whether the release or threat to release*
27 *was intentional or negligent, for the purpose of coercing a*
28 *taxpayer into settling the taxpayer's proposed state tax liability*
29 *with the Franchise Tax Board, constitutes grounds for termination*
30 *of that employee or officer, or other disciplinary actions as*
31 *provided by existing law.*

32 (d) *An officer or employee of the Franchise Tax Board may not*
33 *present a taxpayer's personal or financial information to a court*
34 *of competent jurisdiction or to an administrative agency in*
35 *connection with any court or administrative proceeding in which*
36 *that information would otherwise be available to the general*
37 *public, unless all of the following are satisfied:*

38 (1) *The taxpayer's personal or financial information submitted*
39 *by the Franchise Tax Board is limited to that information that is*

1 *essential to an issue or issues in the court or administrative*
2 *proceeding.*

3 *(2) The Franchise Tax Board has shown a compelling need for*
4 *the submission of the information.*

5 *(3) The information is filed under seal from the public.*

6 *(e) Any taxpayer who has sustained damages as the result of*
7 *any unauthorized release of, or a threat to release, a taxpayer's*
8 *financial or personal information to the general public, by an*
9 *officer or employee of the Franchise Tax Board, may pursue an*
10 *action for damages in a superior court against the Franchise Tax*
11 *Board and the officer or employee responsible for the*
12 *unauthorized release of, or the threat to release, the taxpayer's*
13 *financial or personal information.*

14 SEC. 3. (a) The Legislature finds and declares that the
15 California tax system is based largely on self-assessment, and that
16 the collection by the government of accurate personal and
17 financial information about taxpayers is vital for the proper
18 assessment and collection of taxes. To promote and improve
19 taxpayer self-assessment, the government must maintain public
20 trust in the state tax system and ensure that the financial and
21 personal information supplied by the taxpayers to the Franchise
22 Tax Board is adequately protected during the process of
23 assessment and collection.

24 (b) It is the intent of the Legislature to protect taxpayers'
25 personal and financial information, and to ensure that the
26 information is released by the Franchise Tax Board to the general
27 public only when ~~authorized by the courts~~ *the need to release the*
28 *information is essential and is first authorized by the courts. It is*
29 *the further intent of the Legislature to provide that a taxpayer's*
30 *personal and financial information may only be submitted to a*
31 *court of competent jurisdiction or to an administrative agency in*
32 *connection with a court or an administrative hearing, where the*
33 *court records or the administrative agency's records would be*
34 *otherwise available to the general public, if the information is*
35 *limited to that information that is essential to the issues in the court*
36 *or administrative hearing, the Franchise Tax Board has shown a*
37 *compelling need for the submission of that information, and that*
38 *information is submitted under seal. The Legislature finds and*
39 *declares that these steps are necessary to protect the disclosure by*
40 *the Franchise Tax Board of a taxpayer's personal and financial*

1 *information. It is also the intent of the Legislature that a taxpayer*
2 *who has sustained damages as the result of an unauthorized*
3 *disclosure of the taxpayer's personal and financial information by*
4 *an officer or employee of the Franchise Tax Board may pursue an*
5 *action for damages in a superior court against the Franchise Tax*
6 *Board as well as the officer or employee responsible for the*
7 *disclosure.*

